IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8372 OF 2007

Jaydev Shaileshkumar Bhatt & Anr. .. Petitioners.

V/s.

Atul V. Kantharia & Ors. .. Respondents.

Mr.Santosh B.Narwade h/f.Mr.M.P.Vashi for petitioners.

Mr.Shailesh Thakkar for respondent Nos.1 and 2.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 21st NOVEMBER, 2007.

P.C.:

1. This petition challenges an order of the Trial Court refusing amendment to the plaint.

2. The Chamber Summons taken out by the petitioner was rejected by the Trial Court and while rejecting the same, the Trial Court observes that the proposed defendant No.4 is a Co-operative Housing Society, wherein the flat is situated. However, there is no compliance with the Mandate of Section 164 of the Maharashtra Co-operative

Societies Act, 1960 and that is how the chamber summons has been disallowed.

3. I see no reason why the plaintiffs cannot amend the plaint. If there is no compliance with the provisions pertaining to notice, those pleas are always capable of being raised subsequently. It is not as if the learned Judge observes that the cause of action would undergo a change and it would not be open for the Court to grant the ultimate relief. It is not a case where the structure of the suit is undergoing any change and that is how the Chamber Summons is rejected. No malafides are also attributable to the parties either.

4. In such circumstances, the order under challenge cannot be sustained. The Chamber Summons No.551 of 2007 is made absolute in terms of prayer clause (a) subject to the plaintiffs paying costs, quantified at Rs.5,000/- (Rupees five thousand only) to the original defendant Nos.1 and 2. The costs to be paid within a period of two weeks from today. Upon production of proof being tendered, the amendment be carried out within a period of two weeks thereafter. A copy of amended plaint be served on the newly added defendants within a period of four weeks from the date of carrying out the amendment.

Additional written statement / written statement, including that of the newly added defendants may be filed within a period of eight weeks from the date of receipt of copy of amended plaint.

5. All contentions on merits of both sides are expressly kept open. The pleas, including want of notice are available to be raised and that should be taken cognizance of irrespective of the orders passed by this Court on the Chamber Summons.

6. Chamber summons is disposed of accordingly.

(S.C.Dharmadhikari, J.)